IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.185 of 2013 (O&M)
Date of decision : 15.09.2016

M/s Punjab Steel Corporation and others

...Appellants

Versus

MSTC Ltd.

..Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Vikas Bahl, Sr. Advocate with
Ms. Balpreet Sidhu, Advocate for the appellants.

Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Shekhar Verma, Advocate for respondent-MSTC.

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AMIT RAWAL, J. (Oral)

The appellants-defendants are aggrieved of the judgment and decree rendered by both the Courts below, whereby suit for recovery of ₹69,42,692/- along with interest at the rate of 19.75% p.a. with quarterly rests from the date of bill of lading, till the date of filing of the suit, has been decreed. Though the lower Appellate Court had partly allowed the appeal by reducing the amount and held that the plaintiff would be entitled to recover ₹39,88,405/- as price of goods along with interest at the rate of 19.75% p.a. on the principal amount from the date of filing of the suit till its decision and from the date of decision till its realisation.

Mr. Vikas Bahl, learned Senior Counsel assisted by Ms.

Balpreet Sidhu, learned counsel appearing on behalf of appellants-defendants submits that both the Courts below have committed illegality and perversity in decreeing the suit on the premise that there was a positive plea in the written statement, much less, counter claim that the amount so claimed by the respondent was not in accordance with books of account. In fact respondent failed to discharge the onus with regard to the supply of the alleged material. The goods were supplied from Shipment MV-Vivita, MV-Matumba and MV-Pontomedon from 1990-1991, 1992-1993. Though principal amount was ₹39,00,000/-, therefore, respondent could not include the interest by claiming principal amount at the rate of 19.75% p.a.. He further submits that suit could be only filed by the authorities, but not by the sub-delegate, therefore Durga Pada Mukherjee, was not competent. Interest at the rate of 19.75% p.a., even as per the findings of the lower Appellate Court is too phenomenal and is not in accordance with the guidelines issued by the RBI. At the best, it should be 9% p.a.. The counter claim has erroneously been dismissed being barred by law of limitation, whereas it was not so. The Courts below have not appreciated the fact that the plaintiff had committed fault in charging ₹7,10,830.51 paise because of the increase of the exchange rate. The Counter claim was raised made on the basis of the poor quality of the material. The appellants-defendants had deposited the amount of impurity but the same has not been taken into consideration, this fact is reflected in the balance sheet Ex.D17 and urges this Court for setting aside of the judgment and decree under challenge and formulation of the substantial questions of law as culled out in memorandum of appeal.

I have heard learned counsel for the appellants-defendants and appraised the paper book and of the view that judgment and decree of the Courts below are based on the appreciation of the oral and documentary evidence particularly the material was on the basis of Accounts Book which carries presumption of truth as per the provision of Section 34 of the Indian Evidence Act. The defendants have not been able to dispel/rebut the contents of the same. The Courts below meticulously had gone into the pleadings and as well averments in para No.12 of the written statement vis-a-vis corresponding para of the plaint, have been admitted. In fact the invoice Ex.P3 has fully been established whereas rate of interest of 19% p.a. was agreed to be paid. It is not in dispute that the plaintiff had appointed the expert with regard to the quality of the material i.e. Therapeutics Chemical Research Corporation duly approved by the agency in which per metric tone sample were provided from 50 to 60 KG. As per the joint survey and in the presence of the representative, it was found that there was no impurity. The plaintiff being the Government company was to arrange for the purchase of the iron scrap and to be distributed to the different ultimate consumer against 1% charges. Even bills of lading of the goods had also been proved. As regards the awarding of the interest, though lower Appellate Court reduced to some extent and held entitled the plaintiff to recover ₹39,88,405/- as price of goods along with interest at the rate of 19.75% P.A. on the principal amount as indicated above.

I am of the view that aforementioned interest though it was commercial transaction is on the higher side. Keeping in view the peculiar facts and circumstances and as well as the bank rate, rate of interest is reduced to 12% p.a., in essence, judgment and decree of the lower Appellate

Court is affirmed with modification that instead of interest at the rate of 19.75 % p.a., it shall be 12% p.a. with no change in the date regarding the claim.

Appeal stands partly allowed by partly modifying the judgment and decree of the lower Appellate Court.

15.09.2016 **(AMIT RAWAL)**
pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**